

A&O SHEARMAN

VIA ECF

The Honorable Paul G. Gardephe
United States District Court Judge
Thurgood Marshall U.S. Courthouse
40 Foley Square, Room 2204

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May 13, 2024

Re: *Emigrant Bank and Pacific Mercantile Bank v. SunTrust Bank, et al.*, No. 1:20-cv-02391

Dear Judge Gardephe:

We write on behalf of our clients, non-parties Virgo Investment Group LLC (“VIG”), Virgo Societas Partnership III (Offshore), L.P., and Virgo Societas Partnership III (Onshore), L.P. (collectively the “Virgo Parties”) in response to Your Honor’s Order requesting that Plaintiffs, Defendants, and the Virgo Parties make supplemental submissions regarding the New York County Supreme Court’s default judgment. *See* ECF No. 175.

As intervenors for the limited purpose of responding to certain discovery requests, *see* ECF Nos. 80, 85, 97, and 133, the Virgo Parties submit that the New York County Supreme Court’s default judgment in *SunTrust Bank v. Calrissian LP and Virgo Service Company LLC*, No. 654148/2016 (N.Y. Sup. Ct.) has no impact on the discovery matters to which the Virgo Parties intervened nor on Magistrate Judge Wang’s rulings on those matters, ECF Nos. 131, 169.

By way of background, Calrissian LP was the guarantor on the loan made by the parties in this action and never had any assets other than its equity interests in Our Alchemy LLC, the borrower. Although not a party to the loan agreement at issue, Virgo Service Company (“VSC”) was the general partner of Calrissian and, as such, did not offer defenses to the claims asserted by SunTrust when VSC was added to that lawsuit in New York State Supreme Court.

VIG—the principal entity at issue in the Virgo Parties’ discovery motions, ECF Nos. 97 and 133—was not the “parent of Calrissian LP,” ECF No. 175 at 1. VIG was only the investment manager of two of the limited partners of Calrissian LP, namely Virgo Societas Partnership III (Offshore), L.P., and Virgo Societas Partnership III (Onshore), L.P. *See* ECF No. 108-1 at 3 (Virgo Parties 2014 Structure).

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Whether SunTrust did or did not have an obligation to pursue claims against any unspecified Virgo entity under the credit agreement as demanded by the Plaintiffs, SunTrust clearly exercised rights, pursued remedies and obtained judgments against (i) the guarantor Calrissian, a limited partnership, under the credit agreement; and (ii) VSC, its general partner, which was not a party to the credit agreement under New York law. Neither judgment has any bearing on the principal claim in this case, that is, whether a breach of the credit agreement by SunTrust occurred and what if any defenses may be asserted to such a claim.

Respectfully submitted,

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